

A
COMPARATIVE VIEW
OF THE
CONSTITUTIONS

OF THE
SEVERAL STATES WITH EACH OTHER, AND WITH THAT
OF THE UNITED STATES:

EXHIBITING IN

T A B L E S

The prominent Features of each Constitution,

AND CLASSING TOGETHER THEIR MOST IMPORTANT PROVISIONS UNDER THE
SEVERAL HEADS OF ADMINISTRATION;

WITH

Notes and Observations.

By William Smith, OF SOUTH CAROLINA, L. L. D.
AND MEMBER OF THE CONGRESS OF THE UNITED STATES.

Dedicated to the People of the United States.

Philadelphia,
PRINTED BY JOHN THOMPSON, AND SOLD BY ALL THE BOOKSELLERS
IN THE UNITED STATES.

1796.

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DEDICATION.

FELLOW CITIZENS,

TO you I dedicate this small work, as a token of my love and respect for a people, who are the source and authors of the constitutions it contains. Excuse the freedom of my criticisms of the parts I have disapproved, and receive with candor and indulgence the alterations I have ventured to suggest. If this imperfect performance shall, in the smallest degree, contribute to make some of you better acquainted with those constitutions, in the formation of which you have not immediately participated, or to enable others of you to ameliorate hereafter those which may become the subject of your deliberations, I shall be most amply rewarded.

Warmly attached to the interests and prosperity of this country, every circumstance which can increase its political advantages must, at the same time, advance the happiness of

Your affectionate fellow citizen,

WILLIAM SMITH.

PHILADELPHIA, }
OCTOBER 2, 1796. }

District of Pennsylvania, to wit—

BE IT REMEMBERED, that on the twenty-fourth day of January, in the twenty-first year of the Independence of the United States of America, JOHN THOMPSON of the said District, hath deposited in this Office the Title of a Book, the right whereof he claims as proprietor, in the words following, to wit—

‘ A Comparative View of the Constitutions of the several States with each other, and with that of the United States, exhibiting in Tables, the prominent Features of each Constitution, and classing together their most important Provisions under the several Heads of Administration: with Notes and Observations. By William Smith, of South Carolina, L.L.D. and Member of the Congress of the United States’—

In conformity to the Act of the United States, intituled ‘ An Act for the Encouragement of Learning by securing the Copies of Maps, Charts, and Books, to the Authors and Proprietors of such Copies during the Times therein mentioned.’

SAMUEL CALDWELL,

Clerk, District of Pennsylvania.

Errata.

Table I. column 2. line 4, for 105, read 106.
Page 11, line 20, for 25,000,000, read 21,500,000.
Page 12, (Note k) line 2, instead of FOR, read OF.
Page 24, line 3, for EXCLUDE, read EXCLUDED.

Page 24, line 4, for EXCLUDES, read EXCLUDE.
Page 28, line 9, for GENNERALLY, read GENERALLY.
Page 29, line 15, for TO, read TILL.

propietor, in the words following, to wit:—

of the Congress of the United States.

in connection with the 1912 election in the
for the Encouragement of Learning by the
Christ, and books in the Authors and
during the time the book was published.

RECEIVED CARD/MAIL

1914-15-16-17-18-19-20-21-22-23-24-25-26-27-28-29-30-31-32-33-34-35-36-37-38-39-40-41-42-43-44-45-46-47-48-49-50-51-52-53-54-55-56-57-58-59-60-61-62-63-64-65-66-67-68-69-70-71-72-73-74-75-76-77-78-79-80-81-82-83-84-85-86-87-88-89-90-91-92-93-94-95-96-97-98-99-100-101-102-103-104-105-106-107-108-109-110-111-112-113-114-115-116-117-118-119-120-121-122-123-124-125-126-127-128-129-130-131-132-133-134-135-136-137-138-139-140-141-142-143-144-145-146-147-148-149-150-151-152-153-154-155-156-157-158-159-160-161-162-163-164-165-166-167-168-169-170-171-172-173-174-175-176-177-178-179-180-181-182-183-184-185-186-187-188-189-190-191-192-193-194-195-196-197-198-199-200-201-202-203-204-205-206-207-208-209-210-211-212-213-214-215-216-217-218-219-220-221-222-223-224-225-226-227-228-229-230-231-232-233-234-235-236-237-238-239-240-241-242-243-244-245-246-247-248-249-250-251-252-253-254-255-256-257-258-259-260-261-262-263-264-265-266-267-268-269-270-271-272-273-274-275-276-277-278-279-280-281-282-283-284-285-286-287-288-289-290-291-292-293-294-295-296-297-298-299-300-301-302-303-304-305-306-307-308-309-310-311-312-313-314-315-316-317-318-319-320-321-322-323-324-325-326-327-328-329-330-331-332-333-334-335-336-337-338-339-340-341-342-343-344-345-346-347-348-349-350-351-352-353-354-355-356-357-358-359-360-361-362-363-364-365-366-367-368-369-370-371-372-373-374-375-376-377-378-379-380-381-382-383-384-385-386-387-388-389-390-391-392-393-394-395-396-397-398-399-400-401-402-403-404-405-406-407-408-409-410-411-412-413-414-415-416-417-418-419-420-421-422-423-424-425-426-427-428-429-430-431-432-433-434-435-436-437-438-439-440-441-442-443-444-445-446-447-448-449-450-451-452-453-454-455-456-457-458-459-460-461-462-463-464-465-466-467-468-469-470-471-472-473-474-475-476-477-478-479-480-481-482-483-484-485-486-487-488-489-490-491-492-493-494-495-496-497-498-499-500-501-502-503-504-505-506-507-508-509-510-511-512-513-514-515-516-517-518-519-520-521-522-523-524-525-526-527-528-529-530-531-532-533-534-535-536-537-538-539-540-541-542-543-544-545-546-547-548-549-550-551-552-553-554-555-556-557-558-559-560-561-562-563-564-565-566-567-568-569-570-571-572-573-574-575-576-577-578-579-580-581-582-583-584-585-586-587-588-589-590-591-592-593-594-595-596-597-598-599-600-601-602-603-604-605-606-607-608-609-610-611-612-613-614-615-616-617-618-619-620-621-622-623-624-625-626-627-628-629-630-631-632-633-634-635-636-637-638-639-640-641-642-643-644-645-646-647-648-649-650-651-652-653-654-655-656-657-658-659-660-661-662-663-664-665-666-667-668-669-670-671-672-673-674-675-676-677-678-679-680-681-682-683-684-685-686-687-688-689-690-691-692-693-694-695-696-697-698-699-700-701-702-703-704-705-706-707-708-709-710-711-712-713-714-715-716-717-718-719-720-721-722-723-724-725-726-727-728-729-730-731-732-733-734-735-736-737-738-739-740-741-742-743-744-745-746-747-748-749-750-751-752-753-754-755-756-757-758-759-760-761-762-763-764-765-766-767-768-769-770-771-772-773-774-775-776-777-778-779-780-781-782-783-784-785-786-787-788-789-790-791-792-793-794-795-796-797-798-799-800-801-802-803-804-805-806-807-808-809-810-811-812-813-814-815-816-817-818-819-820-821-822-823-824-825-826-827-828-829-830-831-832-833-834-835-836-837-838-839-840-841-842-843-844-845-846-847-848-849-850-851-852-853-854-855-856-857-858-859-860-861-862-863-864-865-866-867-868-869-870-871-872-873-874-875-876-877-878-879-880-881-882-883-884-885-886-887-888-889-890-891-892-893-894-895-896-897-898-899-900-901-902-903-904-905-906-907-908-909-910-911-912-913-914-915-916-917-918-919-920-921-922-923-924-925-926-927-928-929-930-931-932-933-934-935-936-937-938-939-940-941-942-943-944-945-946-947-948-949-950-951-952-953-954-955-956-957-958-959-960-961-962-963-964-965-966-967-968-969-970-971-972-973-974-975-976-977-978-979-980-981-982-983-984-985-986-987-988-989-990-991-992-993-994-995-996-997-998-999-1000-1001-1002-1003-1004-1005-1006-1007-1008-1009-1010-1011-1012-1013-1014-1015-1016-1017-1018-1019-1020-1021-1022-1023-1024-1025-1026-1027-1028-1029-1030-1031-1032-1033-1034-1035-1036-1037-1038-1039-1040-1041-1042-1043-1044-1045-1046

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PRELIMINARY DISCOURSE.

AMONG the various branches of science, which constitute the education of American citizens, that of *Government* is highly important and necessary; possessing the power of creating and altering their governments, it is peculiarly incumbent on them to acquire that kind of knowledge, which will best qualify them for the judicious exercise of so precious a right. The several Constitutions, which have been framed for the United States, and the individual States, though not free from errors and even blemishes, will be allowed to exhibit, on the whole, more political wisdom and ingenuity than can be found in the constitutions of any other country. By examining the American Constitutions, by comparing them one with the other, and by referring at the same time to the various degrees of order and prosperity, and to the state of society and morals, of each particular state, a tolerably correct estimate may be formed of the relative perfec-

tion or imperfection of those constitutions, and a rational guide may be obtained to assist in altering and improving them. Notwithstanding the utility of this knowledge, and the advantages to be derived from such a comparison, I have found, with regret, in travelling through the states, that, however the constitution of each state may be well known within its own limits, the constitutions of the several states are but imperfectly known beyond the territory which they are intended to govern.

This discovery led me to devote a few leisure hours of the last summer to the work here offered to the public. To make the people of the several parts of the Union better acquainted with each other, and with their respective constitutional codes, and thus to lead their minds to a more attentive contemplation of this interesting subject, was a primary object. It occurred to me, that the exhibiting at one view the leading constitutional provisions of all the different states, concerning each specific branch of administration, and classing them under distinct heads, would incite the reader to an examination of their comparative merits, which would be further stimulated by the notes subjoined; and that this examination would be attended with the double advantage of impressing on his memory the prominent features of all the constitutions, and of maturing his judgment as to their respective merits. Some collateral advantages have been an additional inducement to this performance. Those of our fellow citizens who may, from time to time, be delegated to revise these constitutions, will be furnished with a work, which will assist them in the discharge of their duty, and greatly facilitate their labours.

Observing at one glance, the organizations of government in every state, on each branch of administration, they will be enabled to select that modification which shall appear best adapted to their own local habits, and to have been most productive of good in the states where it prevailed. A competent knowledge of this subject, at present possessed but by few, will thus be quickly diffused to all; and every member of a state convention may become qualified to decide on important and interesting points, the adjustment of which has hitherto been monopolized by a few leading individuals, who too often make the public good subservient to private views. Our youth in schools and colleges will be encouraged to devote some of their time to this necessary science, by finding it thus simplified and methodized. At present, too little attention is paid to this kind of education; while the governments of Rome, Sparta, and Athens, are industriously taught, while the institutions of Lycurgus and Solon form important features of public education, the constitutions of our own country are scarcely read. Hence, a species of knowledge, which ought to be general, is confined to a few politicians, who study it as a particular profession. It will not be denied that this work ought to claim a place in our schools, along with the elementary works of ancient history or philosophy. Many foreigners who come to settle among us, are anxious to acquire a general knowledge of our several constitutions; their curiosity will be gratified by a perusal of this book.

The great diversity of modifications in the several states, on the same branch of administration, all however tending to the

same result, namely the precise *level* of liberty and law, must afford much entertainment to those, who delight in the contemplation of political topics, and are fond of pursuing the science of government through all its ramifications.

Not having had sufficient leisure to make the work as complete and perfect as I could have wished, I am apprized of its being liable to many criticisms, although, to insure accuracy, the tables were submitted to the inspection of a Member of Congress from each state. Should it meet a favourable reception, the objections to which it may be exposed will be attempted to be obviated in a future edition; those friends of the author who feel a solicitude for the perfection of a work of this kind, are requested to transmit to him the corrections which may occur to them.

I trust it will be attended with no inconsiderable benefit; should it however disappoint my expectations, and produce but a trifling portion of the good which I have anticipated, still I shall not regret the time and labour I have bestowed on it.

Being calculated for the general information of the citizens throughout the United States, it was not thought necessary that it should embrace all the minuter details of each constitution, which would only be interesting to the inhabitants of the particular states, for which they are intended, and would have swelled the performance to too large a size.

[Table I.]

LEGISLATIVE.

Period of Adoption.	Number of Branches.	Mode of Election.	Term of Duration.	Qualification of Members.	Qualification of Electors.	Peculiar Powers.	General Remarks.
UNITED STATES. Completed in Convention Sept. 17, 1787. Began operation, March 4, 1789.	Two Branches---Senate and House of Representatives, called, The CONGRESS: The former 32 Members, the latter 105.	Senate by the State Legislatures. [a] House of Representatives by the People. [b]	Senate, 6 years, [c] with a biennial rotation of one third, Representatives, 2 years. [d]	Senate---Citizens, 30 years; 35 years old. Representatives---Citizens, 25 years old.---No pecuniary qualification. [e]	For Representatives, the same as for the most numerous branch of the State Legislatures.	House of Representatives originate bills for raising revenue, [f] and vote impeachment. Senate try on impeachment, two thirds convict. Senate appoint officers, nominated by the President.	
NEW HAMPSHIRE. 1792.	Two Branches---Senate and House of Representatives, called The GENERAL COURT: The former 12 Members, and the latter 120-130.	The People.	Annual.	Freemen---possessing freehold or personal estate.	21 years of age, and payment of taxes.	House of Representatives originate bills for raising revenue, and vote impeachment.---Senate try on impeachment.	
MASSACHUSETTS. March 2, 1780.	Two Branches---Senate and House of Representatives, called, The GENERAL COURT. The former 32 Members, the latter 356.	The People: but Vacancies in the Senate can be filled by the Senate: [g] and in the H. of Representatives from those who were in nomination by the votes of the People at the last preceding election.	Annual.	Senator---Freehold of 300l. or personal estate, 600l. and inhabitant 5 years. Representative---Freehold of 100l. or other property, 200l.	Freeholder---income, 3l. or any estate, value 60l.	Representatives originate money bills, and vote impeachment.---Senate try [h]	
CONNECTICUT. Old Colonial Charter of Charles II. unaltered, except where necessary to adapt it to the Independence of the United States.	Two Branches---The GENERAL COURT. Governor and Lieut. Governor and 12 Assistants forming the Upper House, or Council: [i] the Representatives, or Lower House, consisting of 179 Members.	The People.	The Governor, Lieutenant Governor, and Council or Assistants, annually. Representatives, semi-annually. [k]	Freemen. [l]	Freemen---freehold 40s. or, 40l. personal estate.	The Legislature hears and determines certain causes. [m] Grants reprieves and pardons.	Governor, as Presid. of the council, and the Speaker of the House, have each a vote, besides a casting vote. [n]
RHODE ISLAND. Old Colonial Charter of Charles II.	Two Branches---GENERAL ASSEMBLY. Governor, Deputy Governor, and 10 Assistants. Representatives, 70 Members.	The People.	Council---Annually. Representatives---semi-annually.	Freehold worth 40l. or annual rent of 40s.	Freemen---freehold worth 40l. or annual rent of 40s.	Awards new Trials in the Courts of Law.	
VERMONT. July 4, 1786. (Since revised.)	One Branch---Representatives of the Freemen, called, The GENERAL ASSEMBLY: 145 Members. [o]---But the Governor and Council (of 12) may suspend a Law to the next Session.	The People.	Annual.			Impeachment.---To raise a tax two thirds of the members must be present. [p]	
NEW YORK. April 20, 1777.	Two Branches---Senate, 24 Members; the Governor, President. Assembly, 70 Members.	The People.	Senate for 4 years with annual rotation of one fourth. Assembly---annual.		Electors of the Senate, freehold, 100l. Electors of Representatives, freehold, 20l. or annual rent of 40s.	Two thirds of the Assembly vote impeachment.---Two thirds of the Senate to convict.	Senate are never to exceed 100 [q] Repres: never to exceed 300. Governor and Council of revision have a qualified negative on the laws. Clergy excluded.
NEW JERSEY. July 2, 1776.	Two Branches---Legislative Council, 13 Mem. and Assembly, 39 Members.	The People.	Annual.	Counsellor, 1000l. real and personal estate. Representatives, 500l. disto.	Electors---50l. real and personal estate.	The Council cannot prepare or alter any money bills. [r]	
PENNSYLVANIA. September 2, 1790.	Two Branches---Senate, 23 Members; and House of Representatives, 79 Members.	The People.	Senate for 4 years with annual rotation of one fourth. Representatives---annually.	Residence one year in the District or County. For Senators---Citizens 4 years, and 25 years of age. Representatives---Citizens 3 years, and 21 years of age.	21 years of age, having resided in the State two years next before the election, and within that time paid a State or County Tax, which shall have been assessed at least six months before the Election.---Sons of Persons qualified as aforesaid, between the age of 21 and 22 may vote, although they may not have paid Tax.	Bills to raise revenue must originate in the Representatives. [s] Impeachment by a majority of Representatives, tried by Senate: conviction by two thirds of the Members present.---Judgment not to extend further than removal from Office, and Disqualification.	Senate are never to be less than one fourth, nor more than one third of Representatives. [t] Representatives never to be fewer than 60 nor more than 300.
DELAWARE. 1790.	Two Branches---Called, The GENERAL ASSEMBLY. Senate, 9 Members: House of Representatives, 21 Members.	The People.	Senate for 3 years with annual rotation of one third. Representatives---annually.	Senator---27 years old; freehold 200 acres, or real and personal estate, 1000l. Representative---24 years old; freehold. Both, 3 years residence.	Residence for two years, and payment of Tax, assessed at least 6 months before the Election.	Money bills originate in the Assembly. Impeachment by two thirds of the Representatives. Conviction by two thirds of the Senate.	
MARYLAND. August 14, 1776.	Two Branches---Called, The GENERAL ASSEMBLY. Senate 15 Members: House of Delegates 80 Members.	Senate by Electors chosen by the People [u] Delegates by the People. Senate fill vacancies in their own body by ballot.	Senate elected for 5 years, without rotation. House of Delegates---annually.	For Senate, residence 3 years; real or personal estate, 1000l. For Delegates, real or personal estate, 500l.	Electors for Delegates, and Electors, freehold, 50 acres, or freemen, having property, value, 30l. and having been residents in the County one whole year preceding.	Money bills must originate in the House of Delegates; but they must not touch extraneous matter---Both houses may commit for crimes and contempt. [v] The House of Delegates appoint Treasurers during their pleasure. [w]	Delegates and Electors chosen viva voce, [x] but Electors vote by ballot, and take an oath. Peculiar regulations for the freemen of Annapolis and Baltimore. Clergy excluded.
KENTUCKY. 1792.	Two Branches---Senate, 11 Members: House of Representatives 40 Members.	Senate by Electors chosen by the People. Representative by the People.	Senate for 4 years. Representatives---annually.	Senator must be 27 years of age. Representative must be 24 years of age, both, inhabitants 2 years.	Inhabitant of the State 2 years, or resident of the County 1 year.	Money bills originate solely in the House of Representatives. The Senate may propose amendments. House of Representatives have the sole right of impeachment. The Senate try, two thirds necessary in both.	Senate is to consist of one member more than one fourth of the number of Representatives.
VIRGINIA. July 5, 1776.	Two Branches---Called The GENERAL ASSEMBLY. Senate 24 Members: House of Representatives 150-160 Members.	The People.	Senate for 4 years with annual rotation of one fourth; Delegates---annually.	No particular pecuniary qualification; but Senators and Delegates must be residents and freeholders in the District or County.	Electors---Freeholders. [y]	All laws originate in the House of Delegates. Senate cannot alter money bills. [z] House of Delegates vote impeachments, which are tried by the General Court, or Court of appeals.	
N. CAROLINA. December 18, 1776.	Two Branches---Senate, and House of Commons, called, The GENERAL ASSEMBLY: the former 60 Members; the latter 120 Members.	The People.	Annual.	Senate---Freehold, 300 acres. Commons---Freehold, 100 Acres.	Electors of the Senate---Freehold, 50 acres. Electors of the Commons---payment of Taxes, and a year's residence in the County.	Two houses jointly adjourn themselves by ballot to any future day and place. [aa] Impeachment by the commons, tried by Supr. Court; if the judges impeached, then by a special Tribunal.	Bills must be read three times in each house. [bb] Clergy excluded.
S. CAROLINA. June 3, 1790.	Two Branches---Senate, 37 Members. House of Representatives, 124 Members---Called the GENERAL ASSEMBLY.	The People.	Senate for 4 years, with a biennial rotation of one half. Represent:---biennially. [cc]	Senator, 30 years of age, Citizen and resident in the State 5 years; if resident in the District, freehold, 300l. if non resident, freehold estate in the District, 1000l. Representative---Citizen and resident 3 years; if resident, freehold 500 acres and 10 negroes, or real estate, 150l. if non resident, then freehold estate in the District of 500l.	Electors---Citizens, and resident 2 years, freehold 50 acres; or town lot; or Tax 3s, residence 6 months in the district prior to Election.	Imprisonment for contempt, &c. Impeachment by House of Representatives, two thirds. Trial by Senate two thirds necessary. Representatives originate bills for raising revenue.	Bills must be read three times on three diff. days in each house---no rejected bill reintroduced without leave, and notice ten days. [dd] Clergy excluded. [ee]
GEORGIA. May, 1795.	Two Branches---Senate, 23 Members. House of Representatives, 51 Members---Called, The GENERAL ASSEMBLY.	The People.	Annual. See Note [u]	Senator---28 years; 9 years inhabitant of the United States, 3 years citizen of Georgia; residence in the County 6 months, freehold, 250 acres; or property, 250l. Representative---21 years; 7 years Citizen of the United States, 2 years inhabitant of Georgia, and resident in the County 3 months; freehold 200 acres, or 150l.	Electors---payment of tax, and 6 months residence in the county.	Impeachment.---One third forms a quorum of each branch to do business.	Clergy excluded. Convention to revise the Constitution to be elected November 1797; to consist of three members from each county, and to meet in May 1798.
TENNESSEE. February 6, 1796.	Two Branches---Senate, 11 Members. House of Representatives, 22 Members---Called, The GENERAL ASSEMBLY.	The People.	Senate and Representatives biennial. See Note [cc]	Resident 3 years in the State, and 1 year in the County, and freehold in County 200 acres.	Electors---freehold in the County.	Imprisonment for contempt. Impeachment. All Bills may originate in either House. See Note [f].	Clergy excluded. Number of Senate never less than one third, nor more than one half of Representatives. Repres. never to exceed 40.
Territory N. W. of Ohio. July 13, 1787. [ff]	Governor and Judges legislate.	The President and Senate U. S. appoint the Governor and Judges.	The Gov. for 3 years, removable by the President U. S. The Judges during good behavior. See Ord. July 1787.			To adopt such existing Laws of the several States as may be applicable to the Territory; subject to the revision of Congress. See Note [ff]	

LEGISLA

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Term of Duration.				Qualification of Members.	
SENATE		REPRESENTATIVES.			
United States,	Six Years.	United States,	} Biennial.	Rhode Island,	} Fre
Maryland,	Five Years.	South Carolina,		New Jersey,	
		Tennessee,		Delaware,	
New York,	} Four Years.	New Hampshire,	} Annual.	Virginia,	} Fre
Pennsylvania,		Massachusetts,		North Carolina,	
Kentucky,		Vermont,		South Carolina,	
Virginia,		New York,		Tennessee,	
South Carolina,		New Jersey,			
Delaware,	Three Years.	Pennsylvania,	} Annual.	New Hampshire,	} Fre
Tennessee,	Two Years.	Delaware,		Massachusetts,	
		Maryland,		Maryland,	
New Hampshire,	} Councils.	Kentucky,	} Semi-ann.	Georgia,	} No
Massachusetts,		Virginia,		United States,	
Connecticut,		North Carolina,		Connecticut,	
Rhode Island,		Georgia,	} Semi-ann.	Vermont,	} No
Vermont,		Connecticut,		New York,	
New Jersey,		Rhode Island,		Pennsylvania,	
North Carolina,				Kentucky,	
Georgia,					

RELATIVE.

TABLE.

Qualification of Members.	Qualification of Electors.	Rotations.
Freehold estate necessary.	United States, - { Same as the state in which the Elector resides.	United States, - { Biennial rotation of one third.
	Rhode Island, - {	New York, - {
	New York, - { Freehold requisite.	Pennsylvania, - { Annual rotation of one fourth.
	Virginia, - {	Virginia, - {
Freehold or personal estate necessary.	North Carolina, - {	South Carolina, - { Biennial rotation of one half.
	Massachusetts, - {	Delaware, - { Annual rotation of one third.
	Connecticut, - { Freehold or personal estate necessary.	
	New Jersey, - {	
No proprietary qualification requisite.	Maryland, - {	Maryland, - {
	South Carolina, - {	Kentucky, - { No rotation.
	New Hampshire, - {	Tennessee, - {
	Vermont, - {	
	Pennsylvania, - { No proprietary qualification necessary.	
	Delaware, - {	
	Kentucky, - {	
	Georgia, - {	
	Tennessee, - {	

<i>States.</i>	<i>Mode of Appoint.</i>	<i>Term of Appoint.</i>	<i>Whether re-eligible.</i>	<i>Whether a Council.</i>	<i>Powers of Appoint.</i>
UNITED STATES.	By Electors. [a]	Four Years.	Re-eligible.	No Council. [b]	Nominates, the Senate vacants during the term.
NEW HAMPSHIRE.	By the People.	One Year.	Re-eligible.	Council of five Members elected by the People.	Appoints almost all of the Council.
MASSACHUSETTS.	By the People.	One Year.	Re-eligible.	Council. [cc]	Appoints with some.
CONNECTICUT.	By the People.	One Year.	Re-eligible.	No executive Council.	Appoints with the Sheriff.
RHODE ISLAND.	By the People.	One Year.	Re-eligible.	No executive Council.	No important appointments.
VERMONT.	By the People.	One Year.	Re-eligible.	Lieut. Governor and Council. [f]	Appoints some officers.
NEW YORK.	By the Freeholders of each county. [g]	Three Years.	Re-eligible.	No executive Council, other than the Councils of Appointment and of Revision.	Nominates, the Governor, subject to the confirmation of the Senate.
NEW JERSEY.	By the Legislature. [k]	One Year.	Re-eligible.	The legislative Council act as his executive Council.	
PENNSYLVANIA.	By the People.	Three Years.	Re-eligible for nine years in every twelve.	No Council.	Makes appointments [l] as Coroners, by the People, and by the Legislature. Office and Compensation of Regiments and Companies.
DELAWARE.	By the People.	Three Years.	Re-eligible for three years in every six.	No Council.	Appoints except Treasurers and Coroners.
MARYLAND.	By the Legislature.	One Year.	Re-eligible for three years in every seven.	A Council.	Appoints with Council the Sheriffs.
KENTUCKY.	By Electors. [n]	Four Years.	Re-eligible.	No Council.	Appoints with advice.
VIRGINIA.	By the Legislature.	One Year.	Re-eligible for three years in every seven.	Council of State.	Appoints with Council of the State.
NORTH CAROLINA.	By the Legislature.	One Year.	Re-eligible for three years in every six.	Council of State.	No appointments; the meeting of the Council.
SOUTH CAROLINA.	By the Legislature.	Two Years.	Not re-eligible till after the expiration of 4 years. [o]	No Council.	Appoints some inferior officers.
GEORGIA.	By the Legislature.	Two Years.	Re-eligible.	No Council.	Appoints a few civil and military officers.
TENNESSEE.	By the People.	Two Years.	Re-eligible for 6 years in every eight.	No Council.	No appointments, except of the Legislature, judicial and general of the State.
TERRITORY NORTH WEST OF THE OHIO.	By the President and Senate of U. S.	Three Years—but removable by the President of U. S. at any time.	Re-eligible.	No Council.	Appoints all Magistrate offices except the military and naval officers.

UTIVE.

<i>Power of Appointment to Office.</i>	<i>Other Powers.</i>	<i>Qualifications.</i>	<i>Whether a Lieut. Governor.</i>
...the Senate confirm; fills up vacancies during the recess of the Senate.	Pardon. [c] Qualified negative. Receives Foreign Ministers.	Citizen, 14 years resident, 35 years old.	Vice-President of the United States, President of the Senate.
...appoints almost all officers with advice of the Council.	Pardon. Qualified negative.		No Lieut. Governor.
...appoints with some exceptions. [d]	Pardon. Qualified negative.	Inhabitant 7 years.	Lieut. Governor, who is ex officio Member of the Council, and presides there.
...appoints with the Assistants, [e] only heretofore.	President of the Assistants or Council, with casting vote.		Lieut. Governor, who is Member of the Council.
...appoints important appointments.	President of the Assistants or Council.	Freeholder, and Freeman of some Corporate Town.	Lieut. Governor, called in the Charter, Deputy-Governor.
...appoints some officers.	Governor and Council can suspend Laws to next Session. Pardon. Try impeachments.		Lieut. Governor.
...omits, the Council of Appointment confirm to all offices, except a few. [f]	Pardon. Qualified negative, with the Council of Revision. [i]		Lieut. Governor, President of the Senate.
	President of the Council. Chancellor. Ordinary. Governor and Council Court of Appeals. Pardon.		Vice-President.
...takes appointments, except Sheriffs [1] as Coroners, who are appointed by the People, and State Treasurer, by the Legislature. Militia, Regimental Officers and Company Officers, by the Regiment and Companies.	Pardon, except in case of Impeachment. Qualified negative.	Citizen and Inhabitant 7 years, and 30 years of age.	Vacancy in the office of Governor, by death, resignation, or removal, supplied, ad interim, by Speaker of the Senate.
...appoints except Treasurers, Sheriffs, and Coroners.	Pardon, except in cases of Impeachment.	30 Years age, Citizen of the United States 12 years, and State 6.	
...appoints with Council, except Treasurers and Sheriffs.	Pardon. Embargoes. [m] Removes and suspends officers, except those who hold during good behaviour.	Resident 5 years, 5000l. property.	
...appoints with advice of Senate.	Pardon, except for Treason or Impeachment.	30 Years of age, and resident two years in the State, previous to the Election.	No Lieut. Governor.
...appoints with Council, only Justices of the Peace.	Pardon.	30 Years of age.	President of the Council acts as Lieut. Governor, in case of vacancy in the Government.
...to appointments; but temporary till the next meeting of the Legislature.	Pardon. Embargoes.	Resident 5 years, Freehold 1000l.	No Lieut. Governor.
...appoints some inferior officers.	Pardon. Embargoes.	Resident and Citizen 10 years, Property 1500l.	Lieut. Governor.
...appoints a few civil officers, and all military officers.	Pardon. Qualified negative.	Citizen 12 years, Resident 6 years, 500 acres, and other property worth 1000l.	No Lieut. Governor.
...to appointments, unless in the recess of the Legislature, and except the Adjutant-General of the Militia.	Pardon. Convenes Legislature on extraordinary occasions.	Citizen or Inhabitant 4 years, Freehold 500 acres, 25 years of age.	Speaker of the Senate Lieut. Governor, as in Pennsylvania.
...appoints all Magistrates, and other civil officers except the Judges; and all officers of the militia, except the General Officers.	The Governor and Judges legislate for the Territory. See note [ff] on the Legislative.	Resident in the Territory, and Freehold of 1000 acres.	Secretary of the Territory, appointed in same manner as the Governor, acts as Lieut. Governor in case of absence, &c.

No. IV.

EXECUT
— ABRIGÉ TABL

Mode of Appointment.		Term of Appointment.		Re-eligibility.		Constitutional Provision.
United States, Kentucky,	} Electors.	United States, Kentucky,	} Four years.	United States, New Hampshire, Massachusetts, Connecticut, Rhode Island, Vermont, New York, New Jersey, Kentucky, Georgia,	} Unlimited.	United States, Connecticut, Rhode Island, New York, Pennsylvania, Delaware, Kentucky, South Carolina, Georgia, Tennessee,
New Hampshire, Massachusetts, Connecticut, Rhode Island, Vermont, New York, Pennsylvania, Delaware, Tennessee,		} The people.		New York, Pennsylvania, Delaware,		} Three years.
	} The people.		South Carolina, Georgia, Tennessee,	} Two years.		
New Jersey, Maryland, Virginia, North Carolina, South Carolina, Georgia.		} The Legislature.	New Hampshire, Massachusetts, Connecticut, Rhode Island, Vermont, New Jersey, Maryland, Virginia, North Carolina,		} One year.	Pennsylvania, Delaware, North Carolina, Maryland, Virginia, South Carolina, Tennessee,

ATIVE. TABLE.

Constitutional Council.	Power of appointing to Office.	Qualified Negative.
United States, Connecticut, Rhode Island, New York, Pennsylvania, Delaware, Kentucky, South Carolina, Georgia, Tennessee,	United States, New Hampshire, Massachusetts, Vermont, New York, Pennsylvania, Delaware, Maryland, Kentucky,	United States, New Hampshire, Massachusetts, Vermont, New York, Pennsylvania, Kentucky, Georgia,
No Constitutional Council.	Nomination or appointment with the modifications mentioned.	Qualified negative, with the modifications mentioned.
New Hampshire, Massachusetts, Vermont, New Jersey, Maryland, Virginia, North Carolina,	Connecticut, Rhode Island, New Jersey, Virginia, North Carolina, South Carolina, Georgia, Tennessee,	Connecticut, Rhode Island, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Tennessee,
Council.	No important appointment.	No qualified negative.

<i>States.</i>	<i>Mode of Appointment.</i>	<i>Tenure.</i>
UNITED STATES.	Nominated by President, approved by Senate. [a]	During good behaviour.
NEW HAMPSHIRE.	By the Governor and Council.	During good behaviour. Justices of the Peace for 5 years.
MASSACHUSETTS.	By the Governor and Council.	During good behaviour, except Justices of the Peace, who hold their Commissions 7 years.
CONNECTICUT.	By the Legislature.	Annual appointment.
RHODE ISLAND.	By the Legislature.	Annual appointment.
VERMONT.	By Council and Assembly.	Annually, and oftner if need be.
NEW YORK.	By Governor and Council of appointment.	During good behaviour.
NEW JERSEY.	By Council and Assembly.	Superior Court 7 years. } re-eligible Inferior 5 years. }
PENNSYLVANIA.	By the Governor.	During good behaviour.
DELAWARE.	By the Governor.	During good behaviour.
MARYLAND.	By the Governor and Council.	During good behaviour.
KENTUCKY.	By the Governor and Senate.	During good behaviour.
VIRGINIA.	By the Legislature.	During good behaviour.
NORTH CAROLINA.	By the Legislature, nominated by the Governor.	During good behaviour.
SOUTH CAROLINA.	By the Legislature.	During good behaviour.
GEORGIA.	By the Legislature.	Three years, re-eligible.
TENNESSEE.	By the Legislature.	During good behaviour.
TERRITORY NORTH WEST OF THE OHIO.	The President and Senate of the United States.	During good behaviour.

C I A R Y.

ure.	Removability.	Remarks.
viour.	By impeachment by the House of Representatives, before the Senate.	Compensation undiminishable during term of appointment.
viour. Justices of years.	By Impeachment, and by address of the Legislature to the Governor.	Compensation fixed by Law. Advise Governor.
viour, except Justices, who hold their years.	By Impeachment, and by Governor and Council, on address of both Houses to remove.	Give their opinions to Governor and Council on solemn occasions, [b] and to Legislature on questions of Law. Decide on Divorces.
ent,	Usually re-appointed during capacity to serve, unless guilty of misbehaviour.	Their Courts take cognizance of Divorces.
ent.	Usually re-appointed during capacity to serve, unless guilty of misbehaviour.	Courts decide on Divorces.
ner if need be.	Impeachment by Assembly; tried by Governor and Council.	
viour.	Disqualified, when 60 years old. [c]	
years. } re-eligible.	Impeachment by Assembly; tried by Council.	
viour.	The Governor may remove, on address of two-thirds of each house, in cases not sufficient for impeachment. [d]	Compensation not diminished during continuance in office; may not receive fees or perquisites, nor hold any other office of profit. Supreme Court have cognizance of Alimony and Divorce; may supply defects in Titles occasioned by Deeds lost or defaced. No Chancery.
viour.	Impeachment by House of Representatives, two-thirds of all the Members agreeing. The Governor may remove on address of two-thirds of Members of each Branch, in cases not sufficient for Impeachment.	Compensation not diminished during continuance in office.
viour.	For misbehaviour, on conviction in Court of Law, and by the Governor, on the address of the Assembly, provided two-thirds of each House concur.	
viour.	Impeachment, or by joint address of two-thirds of both Houses of the Legislature.	Compensation not diminished during continuance in office. [e]
viour.	Impeachment by House of Delegates. Judges of the General Court tried by Court of Appeals, and vice versa.	
viour.	Impeachment by Assembly or Grand Jury, and tried by a Special Court.	
viour.	Impeachment by Assembly, tried by Senate.	Compensation unalterable during continuance.
gible.	Impeachment by Assembly, tried by Senate.	Compensation unalterable during continuance.
viour.	Impeachment by Assembly, tried by Senate.	Not allowed to charge Juries with respect to matters of fact, but may state the testimony and declare the Law.
viour,	Impeachment by House of Representatives of United States; tried by the Senate of the United States.	Compensations regulated by Congress. With the Governor, possess several Legislative powers. See note [ff] on Legislative. Freehold qualification of 500 acres requisite.

Mode of electing MEMBERS OF CONGRESS in each State.

N. B. This is regulated by LAW; but as the modes are very diversified, this TABLE was thought an useful APPENDIX to the WORK.

	<i>Senators.</i>	<i>Representatives.</i>	<i>Representatives.</i>
NEW HAMPSHIRE.	CONCURRENT Resolution of both Houses, which may originate in either: the Votes are taken by BALLOT.	Elected AT LARGE throughout the State. 4 Members.	In the first instance, absolute MAJORITY: afterwards, a nomination sent out of double the number wanted, from the highest on the list, and then a PLURALITY; if two equal, the Governor decides by Lot.
MASSACHUSETTS.	CONCURRENT Resolution, each House having a Negative. Votes taken by BALLOT.	By DISTRICTS, in which they must reside. The State divided into as many Districts as Members. 14 Members.	MAJORITY requisite. After one trial, the Electors are confined to the two highest Candidates.
CONNECTICUT.	CONCURRENT Vote, by BALLOT.	AT LARGE. A previous nomination by the People of double the number of Members. 7 Members.	Both nomination and ultimate choice by PLURALITY.
RHODE ISLAND.	JOINT BALLOT of two Houses.	AT LARGE. 2 Members.	MAJORITY requisite.
VERMONT.	First attempt by CONCURRENT Vote; if disagree, JOINT Vote; both by BALLOT.	By DISTRICTS. Residence. 2 Members.	MAJORITY requisite for first attempt; PLURALITY for the others.
NEW YORK.	First attempt by CONCURRENT Vote; if disagree, then JOINT BALLOT.	By DISTRICTS,--indiscriminate residence. 10 Members.	PLURALITY sufficient.
NEW JERSEY.	JOINT Vote; sometimes by BALLOT, sometimes VIVA VOCE.	AT-LARGE. 5 Members.	PLURALITY.
PENNSYLVANIA.	The mode not yet settled by Law: Elections hitherto made, in pursuance of concurrent resolutions, for accommodation. Practice---JOINT Vote, VIVA VOCE. By the Constitution of Pennsylvania, all such Elections must be VIVA VOCE.	By DISTRICTS,---Indiscriminate residence. 1st Election was at large: 2d, was by Districts: 3d, Was at large: 4th, Was by Districts: 5th, The same. 13 Members.	PLURALITY.
DELAWARE.	JOINT BALLOT.	1 Member.	PLURALITY.
MARYLAND.	JOINT BALLOT; it is required that one Senator shall be a resident of the East Shore, and the other of the West.	By DISTRICTS. 8 Members.	PLURALITY.
KENTUCKY,	JOINT BALLOT; but Votes taken and examined in each House: Plurality of the aggregate decides.	By DISTRICTS. Residence. 2 Members.	PLURALITY.
VIRGINIA.	JOINT BALLOT.	By DISTRICTS. Residence. 19 Members.	PLURALITY.
NORTH CAROLINA.	JOINT BALLOT.	By DISTRICTS. Residence. 10 Members.	PLURALITY.
SOUTH CAROLINA.	JOINT BALLOT.	By DISTRICTS. Indiscriminate residence. 6 Members.	PLURALITY.
GEORGIA.	JOINT BALLOT.	AT LARGE. 2 Members.	PLURALITY.
TENNESSEE.	JOINT BALLOT.	1 Member.	PLURALITY.

* viz, of Council and Assembly.

<i>Senators.</i>	<i>Representatives.</i>
NEW HAMPSHIRE, } MASSACHUSETTS, } Concurrent CONNECTICUT, } Vote. VERMONT, } NEW YORK, } All the rest---joint vote.	NEW HAMPSHIRE, } CONNECTICUT, } At Large. RHODE ISLAND, } NEW-JERSEY, } GEORGIA, } DELAWARE and TENNESSEE have each only one Member. All the Rest, by Districts.
Pennsylvania---VIVA VOCE. New Jersey---sometimes. All the rest---Ballot.	* NEW HAMPSHIRE, } Majority requisite. MASSACHUSETTS, } RHODE ISLAND, } * Majority required * VERMONT. } only the first trial in New Hamp- shire and Vermont. All the rest,---Plurality.

NOTES ON THE LEGISLATIVE.

[a] THERE are various modes in the states of appointing the Senators of the United States: these are generally regulated by law. In some, one House nominates to the other, till both concur:—In others, both Houses unite in convention, and make a joint choice; the first is called a *concurrent* vote, the last a *joint* vote. Both modes are either *viva voce*, or by *ballot*. In the first mode, the Senate have the same equal power with the other House, which they have in every other act, and which they ought not to be deprived of in this; in the last, their numbers being always smaller than the other House, their influence is proportionably smaller. The mode by *joint vote*, or *joint ballot*, is the most prevalent; the Representatives being the more popular branch, have too generally carried the point against the Senate. (See the table.)

[b] There are also various modes established by the laws of the several states, of electing the Representatives: in some, the whole number to which the state is entitled, is elected by the whole people of the state; in others, they are distributed into election districts. In some, a majority of all the votes is requisite; in others, only a plurality. In some, residence of the candidate in the district is required; in others not. The mode by districts and plurality of votes, with residence of the candidate, is the most general. (See the table.) The number of Congressional Representatives from each state is regulated by an act of Congress, apportioning the representation from the several states, at a ratio of one Representative for every thirty-three thousand inhabitants. See Act, 1792. The census of the inhabitants is to be taken every ten years, and a correspondent apportionment then made.

[c] An excellent mode for giving system and stability to this branch, which, in two important cases, acts as an Executive, and in one as a Judicial branch.

[d] This frequent recurrence to the people, which is attended with some good effects, is thought by many to make the Representatives too *local* in their policy, and to induce them rather to aim at pleasing their constituents than to advance the *general* good, which frequently requires an apparent sacrifice of *local* interests. A triennial election would have been better suited to a government for so extensive a country.

[e] In many of the state constitutions, pecuniary qualifications are requisite. Here none are required even for the Presidency, which is a very republican trait in this constitution. Both may be right. Men without property not only feel less solicitude for the public tranquillity and prosperity, but are more open to seduction. The candidates, however, for the Federal Legislature, will generally be men, not only of some property, but distinguished in their respective states for their virtues, talents, or integrity; they will be generally characters of some political eminence.

[f] The practice in most of the states of originating *money bills* in the House of Representatives, is derived from a similar practice in the House of Commons of England, which was transplanted here, and engrafted on our provincial policy. Whatever reason there might be for it in England, or however necessary it might have been under our colonial governments, where the Councils, or Upper Houses, were appointed by the Crown, there does not seem the same urgent necessity for it in our American Constitutions, where the Senators and Representatives emanate, with only three exceptions, viz. United States, Maryland, and Kentucky, from the same source. In England, the Commons will not suffer the Lords even to alter a *money bill*, a term so vague, that frequent and sometimes serious disputes have taken place between the two Houses. In our American Constitutions, the jealousy goes, with one or two exceptions, no further than to the *originating*; the Senates have generally the power of altering and amending. In New Jersey and Virginia, however, even that right is withheld; in New Jersey, the Council, which is a legislative body, cannot alter a money bill: in Virginia, not only money bills, but all bills must originate in the House of Delegates, and the Senate are prohibited from altering a money bill. The constitution of Tennessee (the last formed) wisely provides, that all bills may originate (without any exception) in either House. Contentions have sometimes arisen in several states between the two branches, respecting the true signification of the term, *money bill*: To obviate this, the constitution of Maryland has this clause: (XI.) " That the Senate may be at full and perfect liberty to " exercise their judgment in passing laws, and that they may not be compelled " by the House of Delegates, either to reject a money bill, which the emergency " of affairs may require, or to assent to some other act of legislation in their con-

“ sciences and judgment injurious to the public welfare—the House of Delegates
 “ shall not, on any occasion, or under any pretence, annex to, or blend with a
 “ money bill, any matter, cause, or thing, not immediately relating to, and neces-
 “ sary for the imposing, assessing, levying, or applying the taxes or supplies, to be
 “ raised for the support of government, or the current expences of the state; and
 “ to prevent altercation about such bills, it is declared, that no bill, imposing duties
 “ or customs for the mere regulation of commerce, or inflicting fines for the refor-
 “ mation of morals, or to enforce the execution of the laws, by which an incidental
 “ revenue may arise, shall be accounted a money bill: but every bill, assessing, levy-
 “ ing, or applying taxes or supplies, for the support of government, or the cur-
 “ rent expences of the state, or appropriating money in the Treasury, shall be
 “ deemed a money bill.” In nearly all the states, where the restriction exists, the
 term is, a *money bill*, a term of vague signification. The Maryland clause specifies
 indeed, minutely enough, the objects comprehended under the term, but it has car-
 ried them to too great an extent, for it is cramping the Senate too much to re-
 strain them from originating any bill, *applying money in the Treasury* to certain cur-
 rent expences. The constitution of the United States, and those of Pennsylvania
 and South Carolina, confine the right of originating in the House of Representatives
 merely to bills *for raising revenue*, not for applying or appropriating money to be
 raised, or lying in the Treasury. Thus the proposition for *assuming 25,000,000*
Dollars of state debt, which had been moved and lost in the House of Representa-
 tives, was introduced in the Senate as an *amendment* to the funding bill, and passed
 afterwards by the Representatives, without any constitutional objection.

[g] This mode of supplying vacancies, is found only in the constitutions of Mas-
 sachusetts and Maryland. In the constitution of Massachusetts, by 4th Sect. 1st
 Chap. it is provided, that “ in case there shall not appear to be the full number of
 “ Senators returned, elected by a majority of votes for any district, the deficiency
 “ shall be supplied in the following manner, viz. The members of the House of
 “ Representatives, and such Senators as shall be declared elected, shall take the
 “ names of such persons, as shall be found to have the highest number of votes in
 “ such district, and not elected, amounting to twice the number of Senators want-
 “ ing, if there be so many voted for; and out of these shall elect by ballot, a number
 “ of Senators, sufficient to fill up the vacancies in such district; and in this manner
 “ all such vacancies shall be filled in every district of the Commonwealth: and in like
 “ manner, all vacancies in the Senate, arising by death, removal out of the state, or
 “ otherwise, shall be supplied as soon as may be, after such vacancies shall happen.”

In Maryland, it is provided by the 19th article, that “ In case of refusal, death,
 “ resignation, disqualification, or removal out of this state, of any Senator, or on

" his becoming governor, or a member of the council, the Senate shall, immediately thereupon, or at their next meeting thereafter, elect by ballot (in the same manner as the electors are directed to choose Senators) another person in his place, for the residue of the said term of five years."

[h] In the constitution of the United States, and in those of all the States, except Virginia and North Carolina, there seems to be the same mode of trying by impeachment—the accusation proceeding from the more numerous branch, and being heard before the other. There are some variations as to the number required in both Houses to constitute an accusation and conviction; in some, simple majorities being sufficient, in others, two-thirds: In some, a majority of the House may vote an impeachment, but it requires two-thirds of the Senate to convict.

[i] In Connecticut, the assistants, or council, are a legislative, as well as an executive branch; and, in certain causes, as well as in case of impeachment, a judicial branch.

[k] This frequency of election is peculiar to this state, and to Rhode Island; in no other is there a shorter period for election than a whole year. It is however attended, in Connecticut, with no considerable inconvenience, the orderly and enlightened habits of the people generally counteracting the mischievous tendency of their policy in this, as in many other exceptionable parts of their constitution, which is nothing but the old charter, unaltered, except so far as to make it consistent with our independence. There have been indeed lately, some marks of instability in their legislative conduct, in the case of their western lands, in which contending interests, and too frequent changes in their legislature, have occasioned fluctuations in their proceedings, which were not to have been expected from a people, heretofore distinguished for their peculiar steadiness.

[l] Nothing can be more orderly than their *freemen's* meetings. The voters or freeholders assemble in some commodious building, and being all seated, the managers of the election announce the candidates, and the constables, or other officers, go round and collect the votes.

[m] These powers of a judicial and executive nature, form another bad feature in this constitution: The governor alone should be vested with the power of pardon, and the judicial courts exclusively entrusted with the trial of causes. There can scarce be a more improper tribunal for this purpose than a legislative body, where ignorance in matters of law, party, and passion, frequently confound right and wrong. The Representatives, on these occasions, adjourn into the Council

Chamber, when the Governor, as President of the Council, presides over the two Houses: the advocates are heard on behalf of their clients, and when the pleadings are finished, the Houses separate; the question is put by the Speaker of the Representatives, whether they confirm or annul the decree, and the question is generally taken without debate: it often happens, when the House divides, that a number of members, who disapprove of the practice, or who do not understand the subject, detach themselves from both sides, form a separate corps in the centre of the House, and are not counted. These cases are called "public hearings."

[n] This is another peculiarity. In all the other states, the President, or Speaker, has only the casting vote.

[o] This is the *only* state in the Union which has but *one* legislative branch; and it is remarkable, that while all the other states, which formerly had but a single branch, have, from experience, seen the necessity of an alteration, and reformed their constitutions accordingly, *Vermont*, with that experience, and the aid of the several state constitutions, has, so late as 4th July 1786*, organized her government on the plan of a single branch: there is indeed a check on the legislative body, by a power vested in the Governor and Council, to propose alterations to bills, and, in case of their being dissented to by the Assembly, to suspend the operation of the bills till the next session; but this power not extending to the originating of bills, and giving only a suspensory power to the next session, is an inadequate check. The clause is to this effect: "To the end that laws, before they are enacted, may be more maturely considered, and the inconvenience of hasty determinations as much as possible prevented, all bills which originate in the Assembly shall be laid before the Governor and Council, for their revision and concurrence, or proposals of amendment, who shall return the same to the Assembly, with their proposals of amendment (if any) in writing: and if the same are not agreed to by the Assembly, it shall be in the power of the Governor and Council to suspend the passing of such bills until the next session of the legislature. Provided, that if the Governor and Council shall neglect or refuse to return any such bill to the Assembly, with written proposals of amendment within five days, or before the rising of the legislature, the same shall become a law."

[p] The propriety of this restriction is not very obvious. When the members of the legislature are themselves affected by the tax, they will not be likely to impose unnecessary burdens; indeed, a solicitude to secure popularity, by exempting

* The Constitution of Vermont underwent a revision in July 1793, but received no improvement in this particular.

the people from taxes, and the too great facility with which the people are induced to reprobate all taxation, are circumstances which have a very opposite tendency.

[q] Some limitation of this kind would be proper in all the state constitutions. The limits here are however too extensive. By the constitution of Pennsylvania, the number of Representatives cannot exceed 100, nor be less than 60, and the Senate are never to be less than one-fourth, nor more than one-third of the Representatives. By the constitution of Kentucky, the Senate is to consist of one member more than one-fourth of the Representatives. Twenty or 30 Senators, and 100 or 120 members of the other body, appear fully sufficient, in any state, however populous, for the purposes of legislation *. By the constitution of the United States, the number of the two houses will not, for some years to come, much exceed the above limits: and if they be sufficient for the whole Union, there can be no reason for a larger number in any individual state. Beyond that number, deliberation and temper yield to enthusiastic passion and disorder. The more numerous a legislative body, the more unworthy and ignorant men will be found in it, the fewer members will transact the business; the more power will be necessarily vested in the leaders, the more will party influence prevail: this is verified by the experience of all countries. It is impossible to fix precisely the proper limits, but from observation we may assert, that the number above mentioned will be fully competent to ensure deliberate information and safety, and that beyond that point, the evils just mentioned commence, and increase in proportion to the increase of numbers. See Federalist, No. 55.

[r] This restriction on the Council, which is one branch of the legislature, is extremely unwise; it has no parallel in any of the constitutions, except in that of Virginia. Why should they not alter a money bill? The Council, composed of the best men, and elected by the people, though less numerous, are as safely to be trusted in this respect as the other branch: their calm revision of a money bill would be attended with very salutary effects. They have, it is true, the power of rejection, but the exercise of that power often leads to heats and pertinacity. It has been remarked, ever since the organization of the Federal government, under the

* SENATE, or COUN.	REFRES.	SENATE, or COUN.	REFRES.
United States, - 32 - - -	106	Kentucky, - 11 - - -	49
New Hampshire, - 12 - - -	125	Virginia, - 24 - - -	149
Massachusetts, - 31 - - -	366	North Carolina, - 60 - - -	120
Connecticut, - 13 - - -	179	South Carolina, - 37 - - -	124
Rhode Island, - 10 - - -	70	Georgia, - 23 - - -	51
Vermont, - 12 - - -	145	Tennessee, - 11 - - -	22
New York, - 24 - - -	70		
New Jersey, - 13 - - -	39		
Pennsylvania, - 23 - - -	79		
Delaware, - 9 - - -	21		
Maryland, - 15 - - -	80		

present constitution, that the Senate of the United States have been considerably more discreet and economical in the dispensations of public money than the other branch. This may be attributed to their greater sense of responsibility from their smallness of numbers, to their greater attention to business from the same cause, and to their greater exemption from those partialities and impulses, which often produce in numerous bodies very improvident and lavish grants of public money.

[s] The constitution of no state has been so ameliorated as that of Pennsylvania, in every department; from one of the worst, it may now be pronounced one of the best in the Union. Unity, power, and responsibility in the Executive, a division of powers in the legislative, by a creation of two branches, independence and stability in the Judiciary, are the distinguished and excellent features of this constitution. Until the year 1790, a feeble and clogged Executive, a single uncontrolled and despotic branch, and a dependent Judiciary, rendered this state a perpetual scene of faction and disorder. Notwithstanding the numerous evils which had obviously resulted from a single branch, so much was it the favourite of a ruling party, called the *Constitutionalists*, that their opponents, the *Republicans*, long strove in vain to effect a salutary reform. The adoption of the constitution of the United States in 1787 in Pennsylvania, and in 1788 in most of the other states, the discussions which it produced, the light thrown upon the subject of republican government, throughout America, and we may add, the first fruits of the Federal Government, which made it the favourite of all unprejudiced and well informed men, led to a change so fortunate for Pennsylvania. Accordingly, in the convention of 1790, which formed their constitution, there appeared only four members in favour of the former mischievous unity of legislation. But with all its perfections, still we find here and there sacrifices to old habits, and popular prejudices. The vesting the appointment of sheriffs in the people, noticed hereafter in another place, is a striking deformity in their constitution.

[t] This is a pretty good standard; it is nearly the proportion of the Senates of the United States and of South Carolina to the Representatives. In general this proportion has not been sufficiently attended to by the states.

[u] The conduct of the state of Maryland has long borne testimony to the wisdom displayed in its constitutional organization. The appointment of electors for the express purpose of choosing the Senators, the oath they take to select men, most distinguished for their wisdom, talents and virtues, their voting by ballot, free from all influence, and the duration of five years, are almost peculiar to the constitution of this state, and are the best means to ensure a well constituted Senate. Upon several

occasions their integrity and firmness have withstood the dangerous and tumultuous shocks of the more numerous branch, and though they have, at the moment, been the subjects of popular indignation, yet returning reason and moderation have always rewarded them with the public esteem and affection. The features in other constitutions, which most resemble this, are the appointment by electors of state Senators in Kentucky, and of Federal Senators by the state legislatures, and of the President and Vice-President of the United States by electors. In the other states, the election of Senators immediately by the people, is not only liable to cabal, but makes the Senators too dependent on leading and intriguing characters in the several districts. As the Senate is intended to be a check on the popular branch, it ought to be constituted in some mode different from the other, either by electors, or by the people, modified and restricted by particular qualifications. *Mr Jefferson*, in his notes on Virginia, p. 126, condemns the constitution of that state for having overlooked this important circumstance. He makes the following judicious observations: "The Senate is, by its constitution, too homogeneous with
 " the House of Delegates. Being chosen by the same electors, at the same time;
 " and out of the same subjects, the choice falls of course on men of the same description. The purpose of establishing different houses of legislation, is to introduce the influence of different interests or different principles. In some of the
 " American states, the Delegates and Senators are so chosen; as that the first represent the persons, and the second the property of the state. But with us, wealth
 " and wisdom have an equal chance for admission into both Houses. We do not
 " therefore, derive, from the separation of our legislature into two houses, those
 " benefits which a proper complication of principles is capable of producing, and
 " those which alone can compensate the evils which may be produced by their
 " dissensions." In Maryland and Kentucky alone, the mode of choosing by electors prevails: in several of the other states, the voters for Senators must have a greater pecuniary qualification than the voters for the other branch, and the Senators more property than the Representatives. In other countries, the upper or *checking* branch may emanate from some source, other than the people; but with us, all power must flow mediately or immediately from the same source; in order therefore to invigorate this branch with an adequate checking power, it is necessary that it should be less dependent on the people than the popular branch: this can only be done by one or other of the modes above suggested: the Maryland and Kentucky mode appears the best. The time of greatest danger in republics, is when the *violent passions* which agitate the people, have got possession of the popular branch, which will commonly be the case, while annual elections prevail; if the Senate be elected immediately by the people, it is not to be doubted that generally the same passions will pervade the Senate, and render all checks *ineffectual*. The longer

duration of the Senate, which exists in many of the states, is certainly a considerable remedy to this evil, and the experience of the American people has, in all their revisions of their constitutions (except that of Georgia) invited them to make this *inequality* as great as may be thought to consist with a proper responsibility and dependence. By the constitution of the United States, the Senators are elected for six years; in Maryland for five, in New York, Pennsylvania, Kentucky, Virginia, and South Carolina, for four, and in Delaware for three years; and in order to unite firmness, stability, and system, with dependence and responsibility, they have all (except Maryland and Kentucky) established the salutary plan of *rotation*, by which an adequate permanency is combined with a necessary change: the mode and frequency of rotation vary in almost all; the result however is the same. In the Federal Government there is a *biennial* rotation of one *third*; in those of New York, Pennsylvania and Virginia, an annual rotation of one *fourth*; in South Carolina a *biennial* rotation of one *half*; in Delaware an *annual* rotation of one *third*. In Maryland the Senate is for five years, in Kentucky for four, but *without rotation*. It is remarkable, that the eastern states, though generally well governed, have not thought this kind of check necessary, and consequently we find, that in New Hampshire, Massachusetts, Rhode Island and Vermont, the Senates or Councils are annually elected: the Council of New Jersey, and the Senates of North Carolina and Georgia, are also elected annually. As to the eastern states, it may be remarked, as on a former occasion, that the habits of order and moderation, and the generally extensive progress of information in those states, may perhaps render a check to the popular branch, less necessary than in some others. But there is another observation, which accounts more naturally for this difference, and applies to the states of New Jersey and North Carolina, as well as to the eastern states, which is, that the constitutions of those states were all, except Vermont, made *flagrante bello*, when they had little experience to guide them in framing constitutions, and when the arbitrary proceedings of the *Royal* Councils may have created a considerable antipathy to councils and senatorial branches: and as to Vermont, though their constitution is of modern date, the newly settled state of the country could not be expected to furnish them with legislators, quite as enlightened as their neighbours. With respect to Georgia, the recent change in the duration of her Senate from three years to one, is not easily accounted for. She seems to make retrograde movements in the science of government, while her sisters are daily advancing. The constitutions of Connecticut and Rhode Island, are the old charters obtained from Charles II.; those of Massachusetts, New Jersey, and North Carolina, were established in the years 1776 and 1780. The constitutions of the United States, Pennsylvania, Kentucky, and South Carolina, have been framed since the year 1787. It is true, that those of New York and Maryland were made during the war, viz.

in 1776 and 1777, and it is therefore surprizing they should have contained such judicious arrangements, in respect to the Senate. Whenever the eastern states revise their constitutions, it is expected they will make their Senates more independent, and more salutary checks to the popular branch.

The Senate of Maryland can fill up vacancies in their own body, a power not possessed by any other Senate, except that of Massachusetts, in the manner above mentioned, and that of Kentucky.

[v] It was observed, in respect to Connecticut, that the powers vested in the legislature, of hearing and determining certain causes, and of granting reprieves and pardons, were improperly vested in that department. The legislature is certainly not a fit body to perform these judicial and executive functions. The same objections apply here to the constitution of Maryland, which assigns to the legislature the power of commitment for crimes, a power which properly belongs to the judicial courts. In large representative bodies, there will rarely be found that coolness and patience, so requisite for the investigation of facts, which characterize the courts of justice: When such bodies are disposed to punish, it is too generally under the influence of heat and party, and in those cases, justice is of course overlooked.

[w] Appointments are generally vested, by the constitution of Maryland, in the Governor and Council; but from an excess of jealousy, the appointment of *treasurers* is not entrusted to them, though one would think the offices of judge and chancellor, at least, as interesting to the public safety as that of treasurer. This inconsistent jealousy is here carried so far, that the House of Delegates have confined the appointment entirely to themselves, excluding even the Senate from a participation, and making the treasurers dependent on themselves, by holding their offices at the pleasure of that House. This is all wrong: the appointment ought to be in the Governor and Council, and held at their pleasure, or during a term of years, and the officer impeachable by the House of Delegates. It seems as if the care of their property was deemed more important than that of their lives and liberties.

[x] It has often been a disputed point, whether there is greater safety in *voice* or *ballot* elections. In most of the states, the elections by the people are by ballot. *Maryland* and *Virginia* pursue the old English custom of *polling*; every voter there goes up to the hustings, or place of election, and declares aloud the candidate for whom he votes. It is remarkable, in the constitution of Maryland, that all elections for the House of delegates, and for the electors of the Senators, are to be

viva voce, but the electors are to vote for the Senators by *ballot*. If the *balloting* was considered the mode the most free from influence or undue bias, then it ought to prevail in the elections generally; and vice versa, if *open votes* were considered the safest, then the electors of the Senators should pursue that mode. The Governor and Council are elected by the joint *ballot* of the two Houses, and the Senate supply vacancies in their own body by the same mode: the Senators of the United States are also chosen by *ballot*. By the constitution of New York, elections are directed to be *viva voce*; but the framers of it, doubting the expediency of that mode, inserted the following clause in their constitution: (Sec. 6th) "And whereas
 " an opinion hath long prevailed among divers of the good people of this state,
 " that voting at elections by *ballot*, would tend more to preserve the liberty and
 " equal freedom of the people, than voting *viva voce*:—To the end, therefore, that
 " a fair experiment be made, which of those two methods of voting is to be pre-
 " ferred:

" Be it ordained, that as soon as may be after the termination of the present war
 " between the United States of America and Great Britain, an act, or acts, be
 " passed by the legislature of this state, for causing all elections, thereafter to be
 " held in this state, for Senators and Representatives in Assembly, to be by *ballot*,
 " and directing the manner in which the same shall be conducted. And whereas
 " it is possible, that after all the care of the legislature, in framing the said act, or
 " acts, certain inconveniences and mischiefs, unforeseen at this day, may be found
 " to attend the said mode of electing by *ballot*:

" It is further ordained, that if, after a full and fair experiment shall be made
 " of voting by *ballot* aforesaid, the same shall be found less conducive to the
 " safety or interest of the state, than the method of voting *viva voce*, it shall be
 " lawful and constitutional for the legislature to abolish the same, provided two-
 " thirds of the members present, in each House respectively, shall concur therein:
 " And further, that during the continuance of the present war, and until the le-
 " gislature of this state shall provide for the election of Senators and Representa-
 " tives in Assembly, by *ballot*, the said elections shall be made *viva voce*."

The mode of electing by *ballot* has long prevailed in New York, and still continues.

By the constitution of Pennsylvania, it is declared, (2d. Sect. 3d. Art.) "That
 " all elections shall be by *ballot*, except those by persons in their *representative*
 " capacities, who shall vote *viva voce*." This is the very reverse of Maryland,
 where the electors are appointed *viva voce*, and afterwards in their representative
 capacities vote by *ballot*. The most prevailing mode of electing, viz. by *ballot*,

is believed to be the safest; the fear of giving offence to powerful individuals, to relations, friends, and even to distant acquaintances, frequently induces the giving a vote, *viva voce*, which, by ballot, would be given for a more worthy object. Voting by ballot removes all restraint, and leaves the voter perfectly at liberty to follow the dictates of his own conscience and judgment. The argument in favour of the other mode is, that it creates a greater responsibility, and lays the voter under the necessity of voting for men of approved worth and merit; he would be ashamed, it is said, of publicly bestowing his vote, from personal friendship or any improper influence, on a worthless object: but this reasoning has been found by fatal experience to be more plausible than solid: Mankind, when determined to do wrong, too readily find arguments to justify themselves in their own eyes. Besides, it frequently happens, previous to an election, that clamors are unjustly excited, and rumors wickedly circulated against one of the candidates, who, though not the most popular character at the time, is the most honest and able man. The friends of his adversary will propagate, with unbounded zeal, every thing they can to his disadvantage: this, for a while, will create a certain prejudice, which time, reflection, and better information would remove. Under these circumstances, many well-meaning voters, if they voted *viva voce*, would be restrained by timidity from voting for this seemingly unpopular candidate, though at the same time they might be satisfied, in their own minds, that he was the most deserving of their suffrages: they would either stay at home, or vote for the favourite of the moment, whom they despised. In all popular governments, some idle men of the worst characters, and with the worst views, calling themselves, "the people," will, at particular junctures, set up a loud clamor. Peaceable men, who remain much at home, attending to their business, are alarmed, ignorant either of the source or extent of this clamor, and often suppose both to be more important, and of much greater magnitude, than they are afterwards discovered to be. Were they to vote *openly*, under these circumstances, few would have nerves enough to resist the popular current: for their personal safety, they would be compelled to sacrifice those opinions, by which, in a *ballot* election, they would honestly abide.

[y] The Virginia policy, of excluding from the legislature, and from the right of suffrage, all who are not possessed of *freeholds*, has been often complained of as an *aristocratic trait* in their system, ill becoming a state, which boasts so much of the purity of her *democratic principles*. It has been asked, whether a citizen possessing a large *personal estate*, has not as well-founded a pretension to one and the other right, as another holding a few barren acres of land? Were it not for the circumstance above mentioned, namely, the claim of peculiar pre-eminence in *democratic republicanism*, this feature in the constitution of Virginia would probably

have been little noticed, for the objection would otherwise lie as well against the constitutions of several of the other states, where the qualification of a freehold is indispensable. Those of Rhode Island, New York, New Jersey, Delaware, North and South Carolina, require the same qualification, either in the electors or in the elected. The objection, in the abstract, does not appear a very serious one. It has been long the policy of several of the states to require this qualification, which is thought to attach an individual more to his country than the mere possession of personal property, which is of a transient and removable quality. It is true, that in the southern states, where negroes constitute one of the principal sources of wealth, the owner of negroes may be supposed to have a sufficient attachment to his country; but as it will seldom happen, that the owner of negroes will not be, at the same time, the proprietor of some land, the qualification can operate no essential injury. There is, however, in Virginia, a remnant of the old feudal system, as absurd as it is dishonest, and which is altogether incompatible with pretensions to superior purity of republicanism, that is, the exemption of lands from execution for the payment of debts: frequent attempts have been made to abolish this odious appendage of aristocracy; there can be no doubt that they will be repeated, and there is every appearance that the extension of information and a spirit of liberality and justice will soon ensure them success.

[z] Both these restrictions are injudicious. Why should not the Senate originate bills? Why should they not alter money bills when they can reject them? The one is the effect of an overstrained jealousy, the other an unmeaning imitation of English policy, which has been shewn to be inapplicable to America. In no other state is the first restriction to be found. In every other, each House may originate all bills, except money bills; in Vermont, the Council is not a branch of the legislature, though it has the power of proposing amendments to bills, (none of which it can originate) and of suspending their operation to another session. This restriction is then peculiar to Virginia; the other restriction is peculiar to Virginia and New Jersey alone; in all the other states, where the right of originating money bills is exclusively vested in the Representatives, the Senates or Councils, when the latter possess legislative functions, have the right of altering them. Even in Vermont, where the Council is an executive body, this right exists *sub modo*, as above mentioned.

[aa] The reason of this provision, peculiar to North Carolina, is not obvious. A question of adjournment, like any other question, is always decided *viva voce*.

[bb] This regulation, apparently calculated to ensure deliberation, is ineffectual; when a disposition exists in the majority to hurry through a bill, they are seldom prevented by so feeble a barrier: a short bill is easily read in each House three-

times *in one day*: this is frequently done at the close of a session, when the exhausted state of the minds of members, the preparations for their return home, the absence of many, the inattention of all who remain, and the confusion which then always prevails, while they render men less fit for public business, require greater checks in the passing of laws. South Carolina has provided that the bills shall be read three times in each House *on three different days*. This meets the evil, and if not relaxed, is an effectual guard. These are the only two states, in which such a *constitutional* regulation exists. It is generally a *rule* of the House, which being repealable at pleasure, is dispensed with, whenever the will of the majority requires it, and is therefore of no avail in those cases of precipitancy and intemperance, where alone it is necessary, for then the remonstrances of the minority are always over-ruled by the determined enthusiasm of the majority. By the constitution of France of 1791, bills were to be read in the legislature on *distant* days before they could become laws, *unless in cases of urgency*; the proviso, like many others, defeated the rule, for the ardent disposition of that impetuous body could ill brook the tedious delays of such a restraint, and accordingly, whenever the majority were apprehensive that a day's reflection might frustrate a favourite measure, they availed themselves of the prevailing temper of the House, and always voted, *that a case of urgency existed*. By the rules of the two Houses of Congress, every bill must be read three times in each House, and by the rule of the Senate, no bill can be read twice on the same day, which rule cannot be dispensed with, but by the *unanimous* consent of the members. This puts it in the power of any member, at the close of the session, to fix his veto on a bill, by adhering to the rule. It has been often proposed to dispense with it, but the Senate have always thought the barrier so wise and beneficial, that even those who have been the friends of a bill thus obstructed, have preferred the loss of it to a deviation from so wholesome a provision. Indeed, the inconveniences attending the loss of a bill are generally over-balanced by the safety resulting from a restriction, which compels the friends of particular measures to bring them forward in such seasonable time, as to ensure them a fair and calm discussion.

[cc] South Carolina and Tennessee are the only states in the Union, whose most numerous branch is elected for so long a term as two years: in all the rest, it is annually elected, except in Connecticut and Rhode Island, where elections are semi-annual. On Connecticut some remarks have already been made. The *biennial* seems preferable to the *annual* term. The former is short enough to secure responsibility, the latter diminishes that firmness and independence, so essential in a legislator. Surely, a man, who has his property, his connections, and every thing dear to him at stake, will (with the responsibility arising from a biennial election) feel ties strong enough to attach him to the public good; at least, let there be one

session out of two where he may act, unawed by the terrors of public disgrace. If a sufficient time intervene after the session, he may have opportunities to convince his constituents, in the cool moments of reflection, of the rectitude and propriety of his conduct: but where the election immediately succeeds the session, and the passions of the constituents are industriously inflamed by the interested partizans of aspiring competitors, and their judgments surprized by uncandid misrepresentations, the member unvindicated has but a poor chance of a re-election. These apprehensions too often lead well-disposed men, over-fond of popularity and place, to sacrifice their own honest sentiments to the current opinions and prejudices of the day, or to the wild caprices of the influential demagogues of their election districts. At the same time, it is to be understood, that too remote a term of election ought to be avoided, least leading characters, possessed of talents and ambition, might pursue measures injurious to the state, unrestrained by the public voice, which ought always to have its due influence on the constituted authorities. The constitution of South Carolina, by the biennial election of the Representatives, and by the quinquennial and rotatory election of the Senate, is happily calculated, in this respect, to combine a sufficient independence of the member, with a proper responsibility, and the public security. See *Federalist*, No. 52, &c.

[dd] The notice of ten days seems superfluous: if leave be necessary, and the bill is to be read three times on three several days in each House, there is a sufficient check on the re-introduction of bills which have been thrown out. A bill may be lost by a majority of only one member, and a further consideration, more temper, or further information, may convince the House of its utility: Why then impose this restraint? Constitutional impediments, which are strongly exposed to be laid aside, are injurious, by weakening the public respect for barriers, *which ought ever to be held sacred*.

[ee] The exclusion of the clergy from the legislature is found in the constitutions of New York, Maryland, Kentucky, North and South Carolina, Georgia and Tennessee. Why this unjustifiable antipathy to the ministers of the gospel should be found principally in the southern states, is not easily accounted for. Maryland, Kentucky, North Carolina, and Georgia, exclude them, without assigning any reasons. South Carolina sets forth, that, "Whereas the ministers of the gospel
" are, by their profession, dedicated to the *service of God, and the cure of souls*,
" and ought not to be diverted from the great duties of their function, there-
" fore no minister of the gospel, or public preacher, of any religious persuasion,
" whilst he continues in the exercise of his pastoral functions, shall be eligible
" to the office of Governor, Lieutenant-Governor, or to a seat in the Senate or

"House of Representatives." (See Art. 1. Sec. 23.) New York, in assigning similar reasons, exclude them from any civil or military office. Maryland and North Carolina only excludes them from the General Assembly and Council*. These ostensible reasons, so far from being conclusive, rather prove the superior claim of the clergy to admission into the legislatures. The nature of their profession, which dedicates them to the service of God, and the cure of souls, rather tends to qualify them for a service, the object of which is to promote the welfare of the people, and to regulate their conduct by the rules of morality, justice, and right. The clergy are generally well educated men, whose professional duty inculcates and requires the exercise of the moral virtues, and the observance of those principles of justice, charity, temperance, and prudence, which peculiarly qualify them for a legislative station, where such principles are of the most signal utility. Can it be doubted, that if there were many members in the legislatures of the states, thus qualified, things would be better conducted than they are? And it is no answer to say, that all clergymen are not of that description; they will at least be as likely to be so as persons of any other profession; there is indeed a greater probability of their being so than of their being otherwise: at any rate, their profession, so far from creating an incompatibility, has a strong and immediate tendency to generate those excellent qualities of the mind, which would be productive, in legislative bodies, of order, moderation, justice, and public rectitude, and destructive of acrimony, malevolence, faction, ambition, avarice, and other sordid passions, which frequently poison the sources of legislative transactions. If individual instances have occurred, where the sacred garb has been polluted by temporal vices, where ambition, pride, and selfish passions have predominated over the virtuous principles of their divine master and instructor, is it just that such should fix a prejudice against the whole order? As well might the profession of the law be disqualified, because some individuals may have prostituted their professional talents to base purposes. General disqualifications for individual misconduct are justifiable by no rule of reason. The solicitude displayed in the New York and South Carolina clauses, not to divert the ministers of the gospel from the duties of their profession, might have been left to their congregations, who would be sufficiently careful to keep them attentive to their pastoral functions. Are not lawyers, physicians, and mechanics, diverted by their attendance in the legislature from their professional duties, and would the attendance of a clergyman a few weeks in the legislature, be

* Tennessee, with a preamble nearly similar to that of South Carolina, excludes them only from the Legislature. In the same article it is declared, that "no person who denies THE BEING OF GOD, OR A FUTURE STATE OF REWARDS AND PUNISHMENTS, shall hold any office in the civil department of State."

a greater abstraction from his clerical functions, than a few weeks attendance on his plantation, or farm, or other temporal concerns? In the conventions of the states, which ratified the Federal Constitution, we have seen several of the ministers of the gospel, and their conduct has been, in general, exemplary and useful. In some instances, they have been much admired for their learning, candour, judgment, and political knowledge. The clergy of the United States have been generally found among the firmest friends to public order and good government. This has been remarkably conspicuous during our late agitations, in their thanksgiving and fast-sermons, wherein they have zealously and successfully inculcated those excellent principles, which form the basis of well-constituted government, and promote the public happiness. And as the clergy cannot be suspected of ambitious views, or be chargeable with party spirit, their conduct on such occasions must be considered as *disinterested* as it is useful. The disqualification seems then either a remnant of old Gothic policy, transmitted from times, when the clergy were immured in monasteries, or copied from the British government, where they are excluded from Parliament, because they are supposed to be represented in convention, or the offspring of a misguided jealousy, arising from particular instances of misconduct. The *expediency* of admitting into the legislature the ministers of the gospel, ought to be left to their own sense of propriety, to that of their congregations, and to the good sense and discretion of the electors. When the *laity* undertake to exclude the clergy by constitutional regulations, the exclusion favours rather too much of political *intolerance*. The constitution of the United States contains no such exclusion, and an experience of near eight years has not demonstrated its necessity: Amidst the innumerable objections to that instrument, I do not recollect to have ever found the want of such an interdiction in the catalogue of its defects.

[ff] By an ordinance of Congress of July 1787, a constitution was established for the territory north-west of the Ohio. By the act of cession of North Carolina, accepted by act of Congress, 1790, it was stipulated and agreed, that the territory ceded, called the territory south of the Ohio, should have the same privileges and form of government as that north-west of the Ohio. By the ordinance of 1787, it was provided, that whenever the territory north-west of the Ohio, should contain 30,000 inhabitants, they might establish a legislature, and when it contained 60,000 inhabitants, it should be admitted into the Union. The territory south of the Ohio, having the requisite number, accordingly established a legislature in 1794, and having 60,000 inhabitants in 1796, was admitted into the Union, by the name of

the State of Tennessee. But the other territory still continues under the form of government prescribed by the ordinance, by which the Governor and Judges may ordain for their government, such of the laws of the states, as may be applicable to their situation, the same to be laid before and approved by Congress. So few of the existing laws of the states have been found applicable, and so many local laws were necessary, that the Governor and Judges have at various times undertaken to enact laws different from any existing in any of the states; and Congress, aware of the necessity, have been obliged to wink at this departure from the ordinance.

NOTES ON THE EXECUTIVE.

[a] In most of the states, the electors are chosen by the people; in some by the legislature: The constitution has left this point undetermined. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day must be the same throughout the United States.

[b] The President of the United States has no constitutional Council, which he is obliged to consult. He is authorized to require of the principal officers in each of the executive departments, their opinions in writing upon any subject, relating to the duties of their respective offices; and he is said to be in the practice of convening and consulting them (and with them often the Attorney-General) on all matters of importance. The States differ much on this point, some having a Council established by the constitution, which the Executive must consult, and without whose assent he cannot act, others having no Council: in general, a constitutional council may be considered, either as a cloak to the Executive to shelter him when he does wrong, or as a clog to impede his motions when he wishes to do right. It is best that he should act on his own responsibility; in difficult matters of law, he can consult the Attorney General, and in other cases, the officers of state; if he be an honest man, the people will never censure him hastily for mere error of judgment: if he be otherwise, the sooner it is discovered the better: in a complicated Executive, the subdivision of responsibility weakens and destroys it; in a single Executive, it is concentrated and operative.

[c] Cases of impeachment, as in Great Britain, are always excepted by our constitutions, and in some, even murder and forgery.

[cc] Forty persons are chosen by the people for Senators and Counsellors; of these, nine are selected by the joint ballot of the two Houses, as Counsellors to the Governor, and the remaining thirty-one constitute the Senate; but the Counsellors elected may prefer remaining in the Senate, in which case, the requisite number of Counsellors may be elected by the legislature from the citizens at large.

[d] It is understood, that, wherever there exists a constitutional Council, every act of the Executive, relating to appointments, qualified negative, pardons, &c. is done with the advice and consent of such Council.

[e] The assistants in Connecticut are generally called the Council, or Upper-House, being a branch of the legislature, of which the Governor is President, and in which he has a casting vote, besides a vote as a member of the Council.

[f] By the constitution of Vermont, the executive power is vested in the Governor, Lieutenant-Governor, and twelve Counsellors, chosen by the people. The Governor and Council, though the Executive, yet exercise a kind of legislative power; for all bills, after passing the House of Representatives, are laid before them for their revision and concurrence, or proposal of amendment; and if their amendments be not agreed to by the House, the Governor and Council may suspend the passing any bill till next session.

[g] The Governor is elected by persons qualified to elect Senators, who must possess freeholds of the value of one hundred pounds, clear of debt.

[h] The Assembly annually appoint one of the Senators from each great district (being four) to form a Council, called the *Council of Appointment*, for the appointment of all officers (except a few otherwise directed) of which the Governor is President, with a casting vote. It having been long doubted whether the Governor possessed the *exclusive* power of *nomination*, a declaratory act of the legislature was applied for in 1796 by Governor Jay, but properly declined by the legislature. When the duration of any office is not fixed by the constitution, it is confined to be held during the pleasure of the Council of Appointment.

[i] The Governor, the Chancellor, and the Judges of the Supreme Court, or any two of them, with the Governor, are constituted a *Council of revision*, whose duty it is to revise all bills passed by the legislature, and who have power to prevent their becoming laws, unless afterwards passed by *two-thirds* of both Houses. The executive *veto* to acts, passed by the legislature, is an important feature in

republican constitutions, and has frequently been the theme of very interesting discussions. The celebrated Neckar wrote an ingenious work on this subject, for the information and guide of Louis XVI. when that point was agitated in the French Constituent Assembly. Whether in a free government, one or a few individuals should have authority to obstruct altogether the will of a majority of the Representatives of the people, or even arrest and suspend it, has been variously decided in the several states. In some, the Executive have no controul whatever; in others, they have a *limited or qualified controul*. The current of modern opinion sets in favour of the latter decision. Indeed so far back as the year 1777, New York established this principle in her constitution, uniting however, as already observed, with the Governor, the Chancellor and Judges. Of more recent date, the constitution of Massachusetts, 1780, vested this power in the Governor alone. In 1786, the constitution of Vermont, which established but one legislative body, vested in the Governor and Council the power, not only to propose amendments to laws, but *to suspend them to the next session*. In 1787, the constitution of the United States vested in the President, and in 1789, that of Georgia, (unaltered in this respect by that of 1795) and in 1790, that of Pennsylvania, and in 1792, those of New Hampshire and Kentucky, vested in their respective Governors, the same power as had been antecedently vested in the Governor of Massachusetts, and in the Council of Revision of New York, namely, to negative all laws, unless reconsidered and passed by two-thirds of both Houses. In Connecticut, the Governor and Council, forming an Upper-House, have complete legislative powers. The constitutions of Delaware, South Carolina, and Tennessee, are the only constitutions of modern date wherein this qualified negative is withheld from the Executive. By the constitution of South Carolina of 1776, the Governor had a *full* and unqualified *veto* in all cases. Though this power was never abused, the constitution of 1778 annulled it, and even a qualified veto was ineffectually attempted to be inserted in that of 1790. This seems an important error: the re-ineligibility of the Governor, until after an interval of four years, places him in so independent a situation, that the exercise of this prerogative would have probably been free from that popular impulse, which sometimes operates, in similar cases, in the governments of other states, where the public favour is courted by a sacrifice of duty, to ensure a re-election. The advantages of a qualified negative are many and obvious. The Senate, being generally elected by the same electors as the Representatives, will too generally imbibe the same prejudices, and be propelled by the same momentary passions: it is not therefore an adequate check. When laws are passed under the influence of those occasional impulses, which from time to time agitate every community, it is essential to the character and stability of the government that there should exist some external check out of the legislature. In the event of the Governor's negative, the legisla-

ture have still a power to pass the law, provided two-thirds of both Houses sanction it. But the mere circumstance of bringing before their eyes weighty objections in calmer moments, when the storm has subsided, will be always of considerable benefit; the Executive will probably never exercise this power incautiously; neither is it probable that two-thirds of both Houses would be found to sanction a law, against which solid objections had been stated. The President of the United States has, only once in the course of eight years, objected to a bill: in that case, on reconsideration, there was not even a *majority* in favour of it in the Representatives, in which the objections were first considered; and it is believed that a majority of both Houses approved of the President's interposition.

[k] The Council and General Assembly compose the legislature; but the former is Executive as well as legislative: *Seven* constitute a *legislative* quorum; but *three* are sufficient to act as a privy *Council* to the Governor. The Governor and Council (seven of whom to be a quorum) constitute also a Court of Appeals in the last resort, and may grant pardons to criminals, in all cases of treason, felony, &c. so that they unite the several powers of making, expounding, executing, and dispensing with, the laws. As they have no power, however, to make appointments, unless in concurrence with the other branch, their influence is less considerable than in some other states, where that power is exclusively vested in the Executive council.

[l] There is some trifling limitation to this power, by a proviso, "that no person shall be appointed to an office in any county, who shall not have been a citizen and an inhabitant therein one year next before his appointment. The exception of Sheriffs is a bad one: those officers, perhaps more than all others, ought not to be immediately dependent on the people, whose favour is too often incompatible with a faithful and strict execution of such a trust.

[m] This power of laying embargoes is superseded by the Federal Constitution, which vests that power, as incident to the regulation of trade, in Congress.

[n] The constitution of Kentucky provides, That on the first Tuesday in May, in every fourth year, electors (equal to the number of Representatives in each county) shall be chosen by the Freemen thereof, who shall assemble at the Seat of Government on the third Tuesday of the same month, and there elect the Governor and Senate, to continue in office four years from the first of June following. The constitution, in regulating the manner in which the electors are to vote, only prescribed that it be by ballot, and that if two persons should have an equal number of votes, a second ballot should be taken, and if it again be equal

one of the candidates should be drawn by lot. The electors who assembled last May, conceiving that they had a right to supply other regulations, where the constitution was silent, came to a resolution, that the person to be elected Governor, should have a majority of all the electors present, and that on reporting the number of votes, if no one had a majority of the whole, a second ballot should be had out of the two highest. At that election, neither of the candidates having a majority of the electors present, a second ballot was accordingly taken. The unsuccessful candidate brought the matter before the Senate, the tribunal for trying all disputes which may arise concerning the election of the Governor, and that body confirmed the proceedings of the electors. Kentucky is the only state, whose Executive is chosen by electors: This mode is preferable to either that by the people at large, or to that by the legislatures. By the first, the independence of the Executive is weakened: in the constitutional and necessary exercise of his authority, the fear of giving offence to popular leaders, will frequently be an injurious restraint, as the fear of displeasing the legislature will often make him too dependent on that department: the electors, being chosen merely for this purpose, are more likely to be free from party motives and the *esprit de corps*, and have not that opportunity of caballing, which exists in organized and more permanent bodies. See the 68th number of the *Federalist*; a work replete with political wisdom, in which this mode of electing the President of the United States is highly approved, and clearly shewn to be superior to any other,

[o] The *re-eligibility* of the Executive is a point much questioned by some judicious statesmen: the general opinion of the states has, however, been in favour of it, without any limitations. In the Federal Constitution, and in those of New Hampshire, Massachusetts, Connecticut, Rhode Island, Vermont, New York, New Jersey, Kentucky, and Georgia, the re-eligibility is unlimited: In Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, and Tennessee, it is limited: but these limitations are various: in Pennsylvania, the Governor is re-eligible for nine years in every twelve; in Maryland and Virginia, for three years in every seven; in Delaware and North Carolina, for three years in every six; in South Carolina, for two years in every six; and in Tennessee, for six years in every eight. The advantages of an unlimited re-eligibility are, those of retaining a man of experience in the office, and of inviting proper characters to offer themselves, who would, in many instances, be restrained from accepting it, were the period too limited. Few professional men would quit their lucrative pursuits, to be raised, for a few years, to this elevated station, and then to return, with loss and difficulty, to their former avocations. The office would, of course, be generally filled by the wealthy only. See *Federalist*, No. 72.

NOTES ON THE JUDICIARY.

[a] THERE is no part of a constitution, which involves more important effects than that which relates to the *Judiciary*. The great essentials in the organization of this branch of the government are, a *proper appointment* in the first instance, and an *adequate independence* afterwards. To secure the first, the appointment should be vested in that body, where there is the greatest prospect of a good choice, and the greatest *responsibility* for a bad one. The Executive, by its unity, is completely responsible; a chief magistrate, for his own reputation, will search for the best men: the legislature are, in a great degree, exempted from that responsibility; voting by ballot, as they generally do, the choice is the choice of no particular member, and every one is sheltered by the vote of the other; besides, many of the members change every year or two, and the same body which elected an unworthy officer, existing no longer when his incapacity is discovered, no public shame attaches on them as a body. The responsibility of the Executive is not lessened by assigning to a Senate or Council, a negative on his nomination, and such negative may sometimes be a very salutary check, though in general its propriety is questionable: it indeed may, in a very few instances, prevent an improper appointment, but it may also defeat many proper ones. *Independence* in the Judiciary is produced by a tenure during good behaviour, and by an adequate compensation, not liable to diminution. A limited commission would create dependence on the authority invested with the re-appointment: a precarious compensation would beget a dependence on the legislature. The constitution of the United States secures effectually all these advantages, the check, which the Senate has on the nomination by the President, is more necessary, as applied to the Union at large, than it would be in relation to a particular state. The constitutions of Pennsylvania and Delaware vest the appointment absolutely in the Governor, and contain every requisite to secure a good Judiciary: that of New York vests the choice in the Council of Appointment; those of New Hampshire,

Massachusetts and Maryland, in the Governor and Council; that of Kentucky, like that of the United States, in the Governor, with the consent of the Senate; those of Connecticut, Rhode Island, Vermont, New Jersey, Virginia, North Carolina, South Carolina, Georgia, and Tennessee, in the legislature. In North Carolina, however, the Governor has the nomination. In most of the States, the tenure is, good behaviour; it is so in New Hampshire, Massachusetts, New York, Pennsylvania, Delaware, Maryland, Kentucky, Virginia, North Carolina, South Carolina, and Tennessee. In Connecticut and Rhode Island, the judges are annually appointed; but from the customs and habits of the people of Connecticut, there does not result much injury from this deformity in their code, because it is a matter of course to re-appoint the former officer, unless guilty of some serious misconduct. In Vermont, there is more danger of the existence of an undue dependence; the judges are elected annually, and the constitution adds, "and oftener if need be"; one would think they might be satisfied with an annual election. In New Jersey, the judges of the superior court are chosen for seven years, and of the inferior court, for five years; so by the former constitution of Pennsylvania, their judges were appointed for six years; but they have had the wisdom to convert that, by their last constitution, into a tenure during good behaviour. In Georgia, it is still worse; the judges hold their offices for only three years. It is fortunate, however, that the judges are perfectly independent in every State, except Connecticut, Rhode Island, Vermont, New Jersey and Georgia; and with respect to Connecticut, little danger is to be apprehended from their mode. At the same time, it is to be regretted, that any of the Eastern States, which are generally distinguished for the wisdom of their policy, should countenance principles, unfavourable to order, stability, and political morality.

[b] This is peculiar to Massachusetts, and New Hampshire. It may be questionable, whether the judges should ever give their opinions in matters of law, unless from the bench. In England, the judges are called on to deliver their opinions in the house of lords on solemn occasions, and some of the judges are lords of parliament; the separation of departments is not so accurately made there as in the United States.

[c] New York alone has established this limitation; the period, admitting such limitation to be wise, is too early a one: it is the work of the greatest part of a man's life to acquire that knowledge and experience, which constitute a good judge; and to disqualify him at a period of life, when a man can be most useful, is absurd: Seventy or sixty-five would be quite early enough. The regulation, as

it stands, is no less cruel than absurd, for it makes no provision whatever for the dismissed judge: at a time of life when he cannot enter into any other line of business, he is thrown destitute on the world.

[d] In all the state constitutions, and in that of the United States, the Judges are removable by impeachment: in New Hampshire, Massachusetts, Pennsylvania, Delaware, Maryland and Kentucky, they are moreover removable by the governor, on address of the Legislature, for cases of misconduct, not sufficient to require impeachment. In New Hampshire and Massachusetts, the governor and council may remove, on address of a majority of both houses; in Pennsylvania, Delaware, Maryland, and Kentucky, on address of *two-thirds* of both houses. In general, the impeachment is by the representatives, tried by the senate or council: but in Maryland, they may be removed for misbehaviour, on conviction in a court of law. In Virginia, the impeachment of the judges of the general court, preferred by the house of delegates, is tried by the court of appeals, and that of the judges of the court of appeals, by the judges of the supreme court. In North Carolina, the impeachment may be by the assembly or grand jury, and tried by a special court.

[e] The immutability of compensation, except as to encrease, is a valuable feature in the judiciary: it exists in the constitutions of the United States, Pennsylvania, Delaware, Kentucky, South Carolina and Georgia: there can be no doubt that it will be extended: it has been introduced in every constitution, made since the federal constitution, except that of Tennessee, which only provides, "that the judges of the superior court shall, *at stated times*, receive a compensation for their services, to be ascertained by law." There is a singular provision in the constitution of that state, respecting the judiciary, namely, "that the judges of the superior and inferior courts shall not charge juries with respect to matters of fact, but may state the testimony and declare the law."



